

# **EXHIBIT 11**



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March 24, 2017

**VIA EMAIL**

Brian Song  
Baker & Hostetler, LLP  
45 Rockefeller Plaza  
New York, NY 10111-0100

Re: *Picard v. Merkin*, Adv. Pro. No. 09-1182 (SMB)  
Objections to Exhibits and Deposition Testimony Designations, Counter and Cross  
Deposition Testimony Designations

Dear Brian:

Enclosed please find charts of (1) Defendants' objections to the Trustee's exhibits; (2) Defendants' objections to the Trustee's deposition testimony designations and Defendants' deposition testimony counter-designations; and (3) Defendants' deposition testimony cross-designations; as well as highlighted .pdf files of the relevant deposition testimony.

Consistent with the parties' agreement, Defendants continue to reserve the right to call any witness or designate deposition testimony to address the subsequent transfer claim in the event the trial is not bifurcated or the issues addressed by the draft Stipulation as to Net Equity and Initial Transfers if the parties are unable to reach agreement.

In addition, Defendants object to the Trustee's designation of deposition testimony from the following witnesses: Robert Castro, Noreen Harrington, Joshua Nash, Morris Smith, Tina Suhr, and Victor Teicher. These witnesses all live and/or are employed within 100 miles of the courthouse. Accordingly, the testimony of those witnesses may not be presented by deposition and must be presented, if at all, by live testimony at trial. *See* FED. R. CIV. P. 32(a), 45(c). To the extent the Trustee is nevertheless permitted to designate deposition testimony from any of these witnesses either by agreement among the parties or by order of the Court, we have enclosed Defendants' specific objections as well as counter- and cross-designations.

Defendants also object to the Trustee calling Meaghan Schmidt to testify at trial "to authenticate BLMIS's books and records." Ms. Schmidt was listed on the Trustee's initial disclosures as a witness with knowledge concerning "the identification, preservation, and collection of BLMIS's books and records"; no disclosure was made as to her purported knowledge concerning the authenticity of BLMIS's books and records. Ms. Schmidt may not be called for this new and

undisclosed purpose. Accordingly, her testimony is barred by Federal Rule of Civil Procedure 37. To the extent the Trustee is permitted to call Ms. Schmidt to testify at trial, either by agreement among the parties or by order of the Court, Defendants should be afforded an opportunity to take her deposition.

Defendants also object to the Trustee calling Lauri Martin Haas to testify at trial. Ms. Martin Haas was not included on the Trustee's initial disclosures. Therefore, the Trustee may not call Ms. Martin Haas as a witness at trial. *See* FED. R. CIV. P. 26, 37(c)(1). To the extent the Trustee is nevertheless permitted to call Ms. Martin Haas to testify at trial, Defendants should be permitted the opportunity to take her deposition as well.

We also note that the media you provided included a large volume of material that is not listed on Trustee's Exhibit B. To the extent providing these materials was an attempt to designate them as exhibits, we object to their admissibility on the grounds that they were not properly designated, as well as on the grounds of relevancy, hearsay, and authenticity.

Finally, in response to your letter dated March 13, 2017, to the best of our knowledge, our understanding is that Irina Gershengoren was represented by Ira Greenberg of Edwards Wildman (now Locke Lord), Gedale Horowitz was represented by Victor Hou of Cleary Gottlieb, Roman Igolnikov was represented by Steven DiPrima of Wachtell Lipton, and Leon Meyers was represented by Alexandra Shapiro of Shapiro Arato. We do not know whether any of those individuals continue to be represented by those counsel or are represented for purposes of these proceedings.

Sincerely,



Mariel R. Bronen

MRB